

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 18, 2012

v

WILLIAM OTIS DENDY, JR.,
Defendant-Appellant.

No. 305183
Genesee Circuit Court
LC No. 11-028536-FH

Before: O'CONNELL, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Following a jury trial, defendant appeals by right his convictions of carrying a concealed weapon, MCL 750.227, and operating a vehicle with a suspended license, MCL 257.904(1). We affirm.

Defendant's convictions arose from a traffic stop, during which officers found a pistol near defendant's car. Defendant argues that the prosecution did not present legally sufficient evidence for the jury to convict him of carrying a concealed weapon. To address defendant's argument, we review the record de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). We consider the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* at 196. The prosecutor may rely on circumstantial evidence and reasonable inferences from that evidence to prove the elements of the crime. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). "Even in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide." *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). We defer to the jury's role of weighing and assessing the credibility of the evidence. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

To establish the elements of the charged crimes, the prosecution relied on testimony from the two police officers who conducted the traffic stop. Defendant contends that the police officers' testimony was insufficient to convict him on the concealed weapon charge. We disagree. The elements of carrying a concealed pistol in a vehicle are: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was

aware of its presence, and (3) that the defendant was carrying the weapon. *Nimeth*, 236 Mich App at 622. To “carry” is to transport, bear, or convey. See *People v Green*, 260 Mich App 392, 403; 677 NW2d 363 (2004), overruled on other grounds by *People v Anstey*, 476 Mich 436; 719 NW2d 579 (2006). The transporting of a firearm in a motor vehicle by a driver who knows of the weapon can support a conviction of carrying a concealed weapon. *Nimeth*, 236 Mich App at 622.

In this case, the officers testified that they stopped defendant for having an expired license plate tag. One of the officers saw defendant throw something from the passenger window of the car. Defendant then stopped his car and acknowledged the officers. One officer secured defendant in the squad car, while the other officer found a pistol on the ground nearby. Both officers testified that defendant confessed to having the pistol and to throwing the pistol out of his car during the traffic stop. At trial, defendant denied making any confession and denied having the pistol.

The officers’ testimony was sufficient for a reasonable jury to conclude that there was a pistol in defendant’s car. First, the parties do not dispute that defendant operated the vehicle. Officers testified to shining police lights through the back window of the vehicle and identifying defendant as the driver. Second, one officer testified to seeing an object thrown from defendant’s car during the traffic stop. The officer observed the object’s trajectory and its landing point; he then found a pistol in that area.

Defendant argues that there was insufficient evidence to suggest that the pistol was in his vehicle, because the traffic stop occurred in a high crime area where any pistol could have been on the ground. An officer testified, however, that the pistol he found was in “fairly good shape” and appeared to have been “freshly put” in the area. The officer also testified that he observed no other people in the immediate area at the time of the incident. Reviewing the evidence in the light most favorable to the prosecution, there is circumstantial evidence that would justify a rational jury’s finding that there was a pistol in defendant’s car.

There is also evidence in the record for a reasonable jury to conclude that defendant knew or was aware of the presence of a pistol. Both officers testified that defendant admitted throwing the pistol from the car. Although defendant maintains that he made no such statement, the determination of whether defendant made the statement was a credibility question for the jury. We cannot interfere with the jury’s role of assessing witness credibility. *Wolfe*, 440 Mich at 515. Therefore, the actions and statements of the officers, when viewed in a light most favorable to the prosecution, would justify a rational jury’s finding that defendant knew or was aware of the presence of a pistol.

There is also evidence in the record for a reasonable jury to conclude that defendant was carrying the pistol. As we have noted, to “carry” is to transport, bear, or convey. See *Green*, 260 Mich App at 403. Defendant argues there was no evidence that the pistol was registered to him and no evidence of his fingerprints because the officers did not test the pistol for fingerprints. Again, these arguments address the weight of the evidence, which is a jury matter. We will not reweigh the evidence. *Wolfe*, 440 Mich at 515.

We conclude that the evidence, when viewed in a light most favorable to the prosecution, was sufficient on all essential elements to find defendant guilty of carrying a concealed weapon.

Affirmed.

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio

/s/ Jane M. Beckering